IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 995 of 2002

to

FIRST APPEALNo 996 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BANK OF BARODA

Versus

VALLABH KRUPS MAHIAL UDHYOGIK UTPADAK SHAHKARI MANDLI LTD

Appearance:

1. First Appeal No. 995 to 996 of 2002

MR DEVESH A BHATT for Petitioner No. 1

..... for Respondent No. 1-3

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under Section 96 of the Civil Procedure Code, at the instance of the appellant original plaintiff challenging the judgment and decree passed by the Civil Judge (Senior Division), Panchmahals in Special Civil Suit Nos.62/97 and 63/97 respectively, to the extent the Trial Court passed a decree in favour of the appellant-plaintiff only as against the principal debtor and refused to pass decree in respect of defendant Nos.2 and 3 who are the guarantors.

2. We have heard the learned counsel for the appellant, carefully perused the impugned judgment and decree and have referred to such evidentiary material on record to which our attention has been drawn. As a result of this exercise, we are satisfied that the impugned judgment and decree, to the extent which is challenged before us, does not require interference by way of the present appeal. This appeal is, therefore, liable to be dismissed.

3. The appellant as the plaintiff had filed the aforesaid two suits against the defendants (being identical defendants in both the suits) to recover the specified sums of money alleged to be due to the plaintiff-Bank on account of various loans and financial facilities offered to the first defendant. Thus the first defendant was the principal debtor in respect of the claim pressed by the plaintiff-Bank in this suit whereas defendants Nos.2 and 3 were the guarantors in respect of each of such loans and financial facilities.

4. The Trial Court after appreciating the evidence on record found on facts and merits that the plaintiff-Bank had proved its claim against the defendants. However, on the question of limitation, which was seriously contested before the Trial Court, the Trial Court found that the suit was within limitation since the principal debtor had acknowledged the debt by making payment towards the suit claim after the filing of the suit. It was only on this basis that the Trial Court passed the decree against the principal debtor.

4.1. Since the decree was passed in favour of the appellant-plaintiff and against the principal debtor, that part of the decree is not the subject matter of challenge in the present appeal before us. What is under challenge is the refusal of the Trial Court to pass a decree also against defendants Nos. 2 and 3 who are

guarantors in respect of the loans and financial facilities granted to the first defendant - the principal debtor.

5. We are not much concerned with the reasons, and the logic and reasoning adopted by the Trial Court in refusing to pass a decree against defendants Nos.2 and 3, who are the guarantors. The reason for this approach is that, even on the basis of the plaintiff's own case, the guarantors would be liable alongwith and jointly with the principal debtor, and if the principal debtor is not liable, there can be no question of any liability of the guarantors. On the facts of the case, we find that all the defendants had strongly contested the suit on the ground of limitation. The Trial Court found, on the question of limitation, that the suit filed by the plaintiff was within limitation, only because the principal debtor had made part payment of the plaintiff's claim in the suit, after filing of the suit. The Trial Court has clearly misapplied the principle of extension of the period of limitation due to acknowledgment of the debt by the debtor. This principle simply means that if the principal debtor makes acknowledgment in writing in respect of his debt due to the creditor, a afresh period of limitation would commence to run from the date of that acknowledgment. It also follows in law, that if there is a series of such acknowledgments, each of such acknowledgments would in law cause the limitation to run afresh from the date of such acknowledgment. This principle is naturally subject to the rider that no acknowledgment of debt can revive the period of limitation once it has expired. In other words, each of the acknowledgments must be within the period of limitation prescribed for the suit in relation to the last acknowledgment. It is equally obvious that the principle of extension of limitation applies only where the acknowledgement casues the limitation to start running afresh. Obviously, this principle cannot be applied to the computation of limitation in respect of a suit which has already been filed. It is also obvious that once the suit is filed, subsequent events cannot affect the period of limitation, nor can subsequent events affect the extension of limitation in respect of the suit which has already been filed and is pending. In short, whether a suit is within time or time barred, would depend upon the period of limitation prescribed for such suit in the context of the facts which were in existence on the date when the suit was filed. Subsequent events cannot operate in the field of limitation, in respect of a suit which is already filed. Merely to illustrate this, we may give an illustration

where a defendant facing a money claim in a suit may specifically admit in his written statement that he is a debtor of the plaintiff who claims to be a creditor. Yet, such a defendant may also specifically plead that although he is a debtor, such debt cannot be enforced in a Court of law inasmuch as the suit is barred by limitation. It is obvious that even an admission of a liability or acknowledgment of the debt made in the written statement cannot bring the suit for recovery of such debt within limitation, if on the date of its filing it was already time barred.

6. In the premises aforesaid, we find that the principle of extension of limitation has been misconstrued, misinterpreted and misapplied by the Trial Court. The Trial Court was, therefore, not justified in law in passing the decree against the principal debtor. It is equally obvious that where such a decree was not legally justified against the principal debtor, there cannot be any question of passing a decree against the guarantors.

7. In the premises aforesaid, we find that there is no substance in the present appeals and the same are, therefore, summarily dismissed.

8. We may however note, that the subject matter in the present appeals is not a decree already obtained by the plaintiff-Bank as against the principal debtor and, therefore, the observations in the present judgment and order are not to be construed as amounting to interfering with that part of the decree.

[Y.B. Bhatt, J.]

[Sharad D. Dave, J.]

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